SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2492-15T1

GREGORY P. MARKOWIEC,

Appellant,

v.

NEW JERSEY MOTOR VEHICLE COMMISSION,

Respondent.

Submitted May 24, 2017 – Decided February 2, 2018

Before Judges Fuentes and Gooden Brown.

On appeal from the New Jersey Motor Vehicle Commission.

Kevin T. Conway, attorney for appellant.

Christopher S. Porrino, Attorney General, attorney for respondent (Brad M. Reiter, Deputy Attorney General, on the brief).

The opinion of the court was delivered by

FUENTES, P.J.A.D.

Gregory P. Markowiec appeals from the final decision of the New Jersey Motor Vehicle Commission (MVC) to suspend his driving

privileges in this State for a period of ten years after he pleaded guilty to driving while ability impaired (DWAI), in violation of N.Y. Veh. & Traf. Law § 1192(1). At the time he pleaded guilty, appellant had two prior convictions for driving while intoxicated (DWI) in New Jersey, in violation of N.J.S.A. 39:4-50. Appellant argues the New York State conviction does not qualify as a DWI under New Jersey law. Alternatively, appellant argues the MVC should have granted his request for a hearing before suspending his driver's license. We reject these arguments and affirm.

Appellant was arrested in New York State on January 11, 2015, and charged with DWAI, in violation of N.Y. Veh. & Traf. Law § 1192(1), which provides, in relevant part: "[n]o person shall operate a motor vehicle while the person's ability to operate such motor vehicle is impaired by the consumption of alcohol." Appellant pleaded guilty to this offense on August 28, 2015.

In a notice of schedule suspension dated October 20, 2015, the MVC informed appellant that pursuant to N.J.S.A. 39:4-50, N.J.S.A. 39:5D-4, and N.J.A.C. 13:19-11.1, it had "scheduled the suspension of your New Jersey driving privilege because you were convicted of an alcohol-related violation" in New York State. N.J.S.A. 39:5D-4(a)(2) provides:

> The licensing authority in the home State, for the purposes of suspension, revocation or limitation of the license to operate a motor

> vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home State, shall apply the penalties of the home State or of the State in which the violation occurred, in the case of convictions for:
>
> . . . .
>
> (2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle[.]
>
> [N.J.S.A. 39:5D-4(a)(2).]

N.J.A.C. 13:19-11.1(a) also provides, in relevant part, that "[o]ut-of-state convictions . . . for operating a motor vehicle while under the influence of intoxicating liquor . . . shall be given the same effect as if such conviction . . . had occurred in this State."

By letter dated November 9, 2015, addressed to the MVC, appellant acknowledged the receipt of the notice to suspend his driver's license, but argued that his New York conviction for "driving while impaired" was not the legal equivalent of a conviction under N.J.S.A. 39:4-50.

> I submit that the Greene County District Attorney's Office could not prove that I was driving while intoxicated due to the fact that there was no chemical test performed on my blood, urine, or breath. Instead, the Greene County District Attorney's Office conceded that I am guilty of New York Vehicle and

> Traffic Law §1192.1 and this plea was accepted by the sitting judge in the Town of Catskill Justice Court.

Quoting the statutory language in New York Vehicle and Traffic Law §1192.1, appellant claimed: "[i]n the State of New York, test results in the amount of .05% to .07% are generally the only readings considered in a DWAI case." Appellant asserted that he "only admitted that my blood alcohol level was below a .08% [reading] which is the threshold for the New Jersey Driving While Intoxicated offense." Appellant did not submit a transcript of the proceedings before the New York court to support his claim. Appellant concluded his letter by requesting the MVC to reverse its decision to revoke his driving privileges "that is currently being imposed upon me." If the MVC rejected his argument and the letter was "insufficient as an appeal," appellant requested "an immediate hearing regarding . . . the revocation of [his] New Jersey driving privileges."

On January 8, 2016, Raymond P. Martinez, the Chairman and Chief Administrator of the MVC, issued an "Order of Suspension" and "Denial of Hearing Request/Final Decision," explaining in detail the legal and factual basis for suspending appellant's driving privileges for ten years, effective February 8, 2016. We incorporate by reference the Chief Administrator's comprehensive, well-reasoned analysis.

Both New York and New Jersey are signatories to the Interstate Driver License Compact Agreement (Compact), N.J.S.A. 39:5D-1 to -14. In adopting the Compact, the Legislature declared, as a matter of public policy, to:

> (1) Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.
>
> (2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the over-all compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party States.
>
> [N.J.S.A. 39:5D-1(b).]

In State v. Zeikel, 423 N.J. Super. 34, 44 (App. Div. 2011), we held that in adopting the Compact, the Legislature did not intend "that a finding of substantial similarity" between a conviction of DWAI based on N.Y. Veh. & Traf. Law § 1192(1) and a conviction of DWI based on N.J.S.A. 39:4-50 "turn on evidence of the BAC[1] level." Indeed, in Zeikel we reaffirmed that "'prior convictions for operating under the influence or operating while

[1] BAC refers to "Blood Alcohol Concentration."

the ability to do so is impaired are both for violations of the same statute. We see no reason for treating a conviction of either one any differently for second or subsequent offender purposes.'" Id. at 45-46 (quoting State v. Culbertson, 156 N.J. Super. 167, 172 (App. Div. 1978)).

Notwithstanding this legal standard, appellant argues he is entitled to relief under N.J.S.A. 39:4-50(a)(3), which allows a court to exclude a prior conviction if "the defendant can demonstrate by clear and convincing evidence that the conviction in the other jurisdiction was based exclusively upon a violation of a proscribed blood alcohol concentration of less than 0.08%." The record before us does not provide any basis for such relief. As MVC Chief Administrator Martinez correctly found in his January 8, 2016, Order of Suspension:

> [I]n the absence of any official court plea transcript or court order signed by the judge that would serve to establish that [the plea] was allowed to be entered based solely on a BAC of below .08% and without an admission or other evidence . . . of impaired driving ability, your conviction does not fit the very limited exception in N.J.S.A. 39:4-50(a)(3).

We discern no legal or factual basis to disturb the MVC's January 8, 2016 order suspending appellant's driving privileges for ten years effective February 8, 2016.

Affirmed.